

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDWARDS LIFESCIENCES LLC AND)	
EDWARDS LIFESCIENCES PVT, INC.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 12-23-GMS
)	
MEDTRONIC COREVALVE LLC,)	
MEDTRONIC CV LUXEMBOURG)	
S.A.R.L., MEDTRONIC VASCULAR)	
GALWAY LTD., MEDTRONIC, INC.,)	
AND MEDTRONIC VASCULAR, INC.,)	
)	
Defendants.)	
)	

[PROPOSED] AMENDED SCHEDULING ORDER

WHEREAS, on April 30, 2012, the Court so-ordered the proposed Scheduling Order (D.I. 15);

WHEREAS, on February 8, 2013, the plaintiffs, Edwards Lifesciences LLC and Edwards Lifesciences PVT, Inc. (collectively, “Edwards”), filed a Motion to Amend its Complaint pursuant to Federal Rule of Civil Procedure 15 (D.I. 76);

WHEREAS, on February 25, 2013, the defendants Medtronic CV Luxembourg S.a.r.l., Medtronic CoreValve LLC, Medtronic Inc., Medtronic Vascular Galway Ltd., and Medtronic Vascular, Inc. (collectively “Medtronic”) filed an Answering Brief in Opposition to Edwards’ Motion to Amend its Complaint (D.I. 87), which noted that should Edwards be granted leave to amend its Complaint, Medtronic would need additional discovery to address certain issues raised in the Amended Complaint (D.I. 87 at 17-18);

WHEREAS, on May 31, 2013, the Court granted Edwards’ Motion to Amend the

Complaint (D.I. 110 at 3);

WHEREAS, on May 31, 2013, the Court further ordered that it would reopen discovery to allow Medtronic to conduct the limited additional discovery it requested, but would not permit additional discovery by Edwards (D.I. 110 at 4 & n.7);

WHEREAS, on May 31, 2013, the Court further ordered that the parties shall meet and confer and submit an Amended Scheduling Order by Friday, June 14, 2013 (D.I. 110 at 4);

IT IS HEREBY STIPULATED AND AGREED by the undersigned parties, subject to the Court's approval, that the Schedule entered by the Court in this matter on April 30, 2012, and in particular the deadlines for the close of fact discovery and expert discovery be amended, in part, as set forth in the Proposed Schedule below.

Discovery.

Medtronic served its additional document requests on Edwards on June 10, 2013. Both parties will produce any additional documents by July 12, 2013. Medtronic will depose an Edwards Rule 30(b)(6) witness(es) on or before August 2, 2013, pursuant to its June 10, 2013 deposition notice. The scope of all discovery shall be limited as set forth by the Court's May 31, 2013 Order. (D.I. 110 at 4 & n.7.) Any additional expert reports, limited to non-infringement and/or damages under 35 U.S.C. §271(f), will be served by Medtronic on or before August 23, 2013. Expert Discovery will be completed on or before September 6, 2013.

Edwards reserves its right for its experts to respond at trial (and summary judgment, if allowed) to opinions by Medtronic's experts that (1) relate to infringement and/or damages under 35 U.S.C. §271(f), and (2) are based in whole or in part on discovery produced after the Court's May 31, 2013 Order. (D.I. 110 at 4 & n.7.)

Disputed:

Summary Judgment Motions.

Edwards' Proposal: Edwards does not read the Court's May 31, 2013 order to allow the parties additional time to file letter briefs seeking permission to move for summary judgment. (D.I. 110 at 4 n.7).

Edwards believed it had reached an agreement during the parties' meet-and-confer on Monday, June 10, 2013 that both sides could serve expert reports based on the discovery produced after the Court's May 31, 2013 Order, and that the parties could use such reports for summary judgment regarding infringement under 35 U.S.C. §271(f). Despite the meet-and-confer, Medtronic did not include the agreement in its proposed Amended Scheduling Order. On the morning of June 14, 2013, Medtronic rejected Edwards' proposed Amended Scheduling Order. That morning, Edwards informed Medtronic that the parties should submit a contested scheduling order on the expert reports and summary judgment, if the parties could not agree. Edwards tried to reach a compromise throughout the day.

Medtronic's Proposal: Edwards agreed during the parties' meet-and-confer on Monday, June 10, 2013 to Medtronic's Proposal to allow for an opening letter brief requesting permission to file summary judgment to be filed no later than September 13, 2013. The parties did not discuss additional expert reports from Edwards during the meet-and-confer. Edwards withdrew its agreement regarding summary judgment letter briefs after the close of business on the filing date. Medtronic believes that it should be provided the opportunity to seek permission to file summary judgment given that 271(f) was not in the case when the original deadline to file summary judgment letter briefs passed. Medtronic therefore proposes the following deadlines:

Any opening letter brief seeking permission to file a motion for summary judgment

regarding infringement under 35 U.S.C. §271(f) shall be no longer than three (3) pages and shall be filed with the Court no later than September 13, 2013. Answering letter briefs shall be no longer than three (3) pages and filed with the Court no later than September 20, 2013. Reply letter briefs shall be no longer than two (2) pages and filed with the Court on or before September 25, 2013.

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Dated: June 14, 2013

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Medtronic, Inc., and Medtronic Vascular,
Inc.*

SO ORDERED, this ____ day of June, 2013.

Chief, United States District Court Judge